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1942—

File No. Land Improvement Scheme II/42

Legal **DEPARTMENT**

B **BRANCH**

K·S·R.
26/5.

Subject:—

P=H/8

Rules and Notifications under the Bombay Land Improvement Schemes Act 1942.

Std. Sectt. Slip 24 B a.

563-B

C O N T E N T S.

Legal Department File No. Land Improvement Schemes II/42.

Sr. No.	R. I. / G. No.	Subject	Ages.
		Bombay Land Improvement Schemes Act.	
*1.	U. R. to R.D. No. 10329 28/12/1942/	Draft Land Improvement Schemes, Rules and Forms there under	2 to 19. (pp.5-19 not typed).

V.VK. 22/5/43/ 5C.

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Office of the M.L.A.

A revised draft of the rules and forms is appended.

2. Rule 2.- The word "Government " does not occur anywhere in the rules. It occurs only once in form 4. The definition of the term is not necessary. It is also not necessary to define the term "section" . These definitions have therefore been omitted.

3. R.D. draft rules 3 and 5 have been combined revised rule 3.

4. Revised draft rule 4(1) corresponds to R.D. draft rule 4.

Revised draft rule 4(2) corresponds to R.D. draft rule 6. It is proposed in R.D. draft to provide for service of notice by post also, together with an acknowledgment receipt. It is presumed service by post is intended to obviate difficulties when the person concerned is not prepared to received the notice. It would therefore create difficulties if an acknowledgment is made compulsory in the case of service by post. Revised rule 4(2)(d) therefore provides merely for service by post. In view of provisions of section 28 of the Bombay General Clauses Act, 1904 , it is not necessary to provide for service by registered post. The service of a notice by post shall be deemed to be effected by properly addressing, prepaying and posting it by registered post.

5. Revised rule 5 corresponds to R.D. draft rule 7. The R.D. draft rule 7 provides that the notice shall also require the person mentioned in clauses (iii) , (iv) and (vi) of section 8(1) to intimate his assent. This does not appear to be correct. It will be seen from the provisions of section 9 that the assent is only required from the owners of the land s and not all other

all other persons affected by the scheme. Sub-rule (2) of revised rule 5 makes this clear.

The provisions in the R.D. draft rule 7 that if no intimation is received by the Board from the person concerned within a period of fourteen days from the date of receipt of the notice by him it shall be presumed that he has consented to the making of the scheme is ultra vires section 9 of the Act which requires specific giving giving of consent, and which by its proviso empowers Government to proceed in the absence of such specific consent.

6. Revised rule 6 corresponds to R.D. draft rule 8. Provision is made in this rule for the publication of the scheme after it is sanctioned under sub-section (1) of section (2) of the said section 9. It is presumed that this accords with R.D.'s intention. and also after it is modified in appeal under sub-section (7) of the said sections

7. R.D. draft rules 9 and 10 are combined in revised rule 7.

8. R.D. Rule 11 corresponds to sub-rule (1), and R.D. rule 12 corresponds to sub-rule (2) revised rule 8. Revised rule 8(2) is recast so as to conform to the provisions of sub-section (8) of section 13.

9. Revised rule 9 corresponds to R.D. draft rule 13.

10. R.D. draft rule 14 is open to objection. Section 84 requires that the amount by which and the conditions subject to which rent of any land may be enhanced should be prescribed in the rules. The general provision as in R.D. draft rule 14 that these matters shall be determined in accordance with the procedure prescribed in section 12 of the Bombay Tenancy Act will not be covered by section 13. Section 12 of the Tenancy Act provides for the holding of a formal enquiry and also for an appeal to a First Class Subordinate Judge. It gives power of the court of the Mamlatdar. It also provided for special court fees. All these matters cannot be prescribe in rules. The draft rule has therefore been omitted. It will be necessary for the Government to make a suitable rule from time to

time prescribing the amount or extent by which rent payable by a tenant may be enhanced and the conditions subject to which it may be enhanced.

11. Revised rule 10 corresponds to R.D. draft rule 15.

12. Form 3. - Under section 3(1), proviso, a scheme may in certain circumstances be sanctioned also by the Provincial Government. The necessary provision has therefore been made in this form. Under section 11(4) an owner may express in writing his inability to carry out any work to the officer appointed to enforce the scheme. This has also been provided for in form 3.

13. Form 5.- Under section 16 the person authorised may enter for the purpose of preparing , sanctioning or executing a scheme . The form has been amended to provide for all these cases.

Id/- P.N.M.
dt/- 28/12/

Remembrancer of Legal Affairs.

U.R. to he R.D. No. 10329 dated the 28th December 1942.

V.VK. 22/5/56/ 5C.